

1 **VENABLE LLP**
2 Celeste M. Brecht (SBN 238604)
3 cmbrecht@venable.com
4 Matthew M. Gurvitz (SBN 272895)
5 mmgurvitz@venable.com
6 2049 Century Park East, Suite 2300
7 Los Angeles, CA 90067
8 Telephone: (310) 229-9900
9 Facsimile: (310) 229-9901

10 Attorneys for Defendants
11 **CALIFORNIA STEM CELL**
12 **TREATMENT CENTER, INC.,**
13 **CELL SURGICAL NETWORK**
14 **CORPORATION, ELLIOT B. LANDER, M.D.**
15 and **MARK BERMAN, M.D.**

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **EASTERN DIVISION**

19 **UNITED STATES OF AMERICA,**

20 Plaintiff,

21 v.

22 **CALIFORNIA STEM CELL**
23 **TREATMENT CENTER, INC., a**
24 **California corporation, CELL**
25 **SURGICAL NETWORK**
26 **CORPORATION, a California**
27 **corporation, and ELLIOT B. LANDER,**
28 **M.D., MARK BERMAN, M.D.,**
individuals,

Defendants.

CASE NO. 5:18-CV-01005-JGB-KK

Hon. Jesus G. Bernal
Riverside, Courtroom 1

**DEFENDANTS' UNOPPOSED *EX PARTE* APPLICATION TO
CONTINUE HEARING ON
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT,
PLAINTIFF'S MOTION TO
STRIKE, AND DEFENDANTS'
FOUR DAUBERT MOTIONS**

Action Filed: May 9, 2018
Trial Date: February 11, 2020

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900

1 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** Defendants California Stem Cell
3 Treatment Center, Inc., Cell Surgical Network Corporation, Elliot B. Lander, M.D.
4 and Mark Berman, M.D. (collectively, "Defendants") hereby make their unopposed
5 *ex parte* application (the "Application") for an order continuing the hearing on
6 Plaintiff's Motion for Summary Judgment (ECF Doc. 45), Plaintiff's Motion to
7 Strike the Declaration of Elliot Lander, M.D. (ECF Doc. 63) and Defendants' four
8 *Daubert* Motions (ECF Docs. 65-68) from December 9, 2019 to December 16, 2019
9 or at such time that is convenient for the Court.

10 Good cause exists for granting this Application:

11 • Counsel for Defendants are not available on December 9, 2019. *See*
12 Decl. Gurvitz at ¶ 2.
13 • The requested and unopposed continuances will not result in any
14 prejudice to any of the parties.

15 This unopposed *ex parte* application is based on this Application, the attached
16 memorandum of points and authorities, the concurrently filed Declaration of
17 Matthew M. Gurvitz, the pleadings on file in this action, and any other matter as the
18 Court may consider in connection with this Application.

19
20 Dated: November 12, 2019

VENABLE LLP

21 By: /s/ Matthew M. Gurvitz
22 Celeste M. Brecht
23 Matthew M. Gurvitz
24 Attorneys for Defendants
25 CALIFORNIA STEM CELL
26 TREATMENT CENTER, INC., CELL
27 SURGICAL NETWORK
28 CORPORATION, ELLIOT B. LANDER,
M.D. and MARK BERMAN, M.D.

MEMORANDUM OF POINTS AND AUTHORITIES

Good cause exists to grant Defendants California Stem Cell Treatment Center, Inc., Cell Surgical Network Corporation, Elliot B. Lander, M.D. and Mark Berman, M.D. (collectively, “Defendants”) unopposed request for a continuance of the currently scheduled hearings on Plaintiff’s Motion For Summary Judgment, Plaintiff’s Motion to Strike the Declaration of Elliot Lander, M.D., and Defendants’ four *Daubert* Motions (ECF Docs. 45, 63, 65-68).

Counsel for Defendants are not available for the December 9, 2019, hearing date. Plaintiff's Motion for Summary Judgment was originally scheduled to be heard on August 5, 2019. On July 10, 2019, this Court, on its own motion, issued an Order continuing the hearing on Plaintiff's Motion for Summary Judgment to December 9, 2019, and requested that the parties submit proposed briefing schedules. *See* ECF Doc. 56. The parties submitted a stipulated briefing schedule and all motions, oppositions, and reply briefs have since been filed according to that briefing schedule.

However, lead counsel for Defendants did not realize at the time that they were already scheduled to be out of town for December 9, 2019 when the hearing date was ordered by this Court. *See* Gurvitz Decl. at ¶ 2. Therefore, Defendants respectfully request that the Court move the hearing date by one week or when convenient for the Court to hear the noticed Motions.

On November 8, 2019, Defendant’s counsel, Matthew Gurvitz, gave notice of this Application to Plaintiff’s counsel, Natalie Sanders. Gurvitz Decl. ¶ 3. During that telephone call, Plaintiff’s counsel confirmed that Plaintiff does not oppose Defendants’ *ex parte* application to continue the hearing date on the above-referenced motions so long as the hearing on all pending motions be continued to the same date. *Id.* Defendants also respectfully request that the hearing date on all pending motions be set for the same date for the convenience of the parties and Court. *Id.*

ARGUMENT

I. GOOD CAUSE EXISTS TO GRANT THIS APPLICATION

3 *Ex parte* applications are solely for extraordinary relief and should be used
4 with discretion. *See Mission Power Engineering Co. v. Continental Casualty Co.*,
5 883 F. Supp. 488 (C.D. Cal. 1995). Good cause exists where (1) the moving party
6 will be irreparably prejudiced absent *ex parte* relief; and (2) the moving party is
7 without fault for creating the circumstances warranting *ex parte* relief or the
8 circumstances are the result of excusable neglect. *See* Schwarzer, et al., RUTTER
9 GROUP PRACTICE GUIDE: FED. CIV. PROC. BEFORE TRIAL, CAL., ¶ 12:170 (“RUTTER
10 GUIDE”), citing *Mission Power*, 883 F. Supp. at 492. Among the types of situations
11 warranting *ex parte* relief include ministerial matters (such as requests to extend
12 page limits or extensions of time) and scheduling matters (such as motions to shorten
13 time for hearing). RUTTER GUIDE, ¶¶ 12:162, 12:172.

14 Good cause exists here to grant the requested short continuance of the hearing
15 date because counsel for Defendants are not available for the hearing. Indeed, lead
16 counsel for Defendants – Celeste Brecht and Matthew Gurvitz – will both be outside
17 the State of California on December 9, 2019 in connection with other business.

18 First, Defendants will be irreparably prejudiced absent the requested one-
19 week continuance as counsel for Defendants are not available on the noticed hearing
20 date to present oral argument on important matters before the Court, including but
21 not limited to Plaintiff's motion for summary judgment.

22 Second, the requested continuance will not prejudice Plaintiff. Indeed,
23 Plaintiff agreed to the requested continuance and does not oppose this Application,
24 so long as all of the pending motions before this Court are continued to the same
25 date for hearing. Gurvitz Decl., ¶¶ 3.

26 Thus, Defendants respectfully request that this Court continue the hearing on
27 Plaintiff's Motion For Summary Judgment, Plaintiff's Motion to Strike the
28 Declaration of Elliot Lander, M.D., and Defendants' four *Daubert* Motions (ECF

1 Docs. 45, 63, 65-68) from December 9, 2019 to December 16, 2019, or any time
2 thereafter as is convenient for the Court.

3

4 Dated: November 12, 2019

VENABLE LLP

5

6 By: /s/ Matthew M. Gurvitz

7 Celeste M. Brecht

8 Matthew M. Gurvitz

9 Attorneys for Defendants

10 CALIFORNIA STEM CELL

11 TREATMENT CENTER, INC., CELL

12 SURGICAL NETWORK

13 CORPORATION, ELLIOT B. LANDER,
14 M.D. and MARK BERMAN, M.D.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900

CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that a true and correct copy of the above
3 and foregoing document has been served on November 12, 2019 to all counsel of
4 record who are deemed to have consented to electronic service via the Court's
5 CM/ECF system per Civil Local Rule 5.2.

/s/ Matthew M. Gurvitz
Matthew M. Gurvitz

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900